UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION 1:19-cv-00297-MR

KENNETH FOSTER,	
Plaintiff,	
vs.	ORDER
LACY H. THORNBURG, Judge,	<u> </u>
Defendant.)

THIS MATTER is before the Court on Plaintiff's motion for return of his filing fee. [Doc. 22].

Pro se Plaintiff Kenneth Foster ("Plaintiff") is a federal inmate currently incarcerated at Fort Dix East Federal Correctional Institution located in Joint Base MDL, New Jersey. On October 18, 2019, Plaintiff filed a complaint in this matter pursuant to <u>Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics</u>, 403 U.S. 388 (1971). [Doc. 1]. Plaintiff named the Honorable Lacy H. Thornburg, former United States District Judge, as the sole Defendant. On December 6, 2019, the Clerk noted receipt of the full filing fee of \$350.00 from Plaintiff. Thereafter Plaintiff's Complaint failed initial review pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A based on judicial immunity, statute of limitations, and for Plaintiff's failure to state a

claim upon which relief could be granted. [Doc. 12]. Plaintiff then moved the Court under Rule 59(e) of the Federal Rules of Civil Procedure to alter or amend its judgment dismissing Plaintiff's complaint. [Docs. 14, 16]. The Court denied Plaintiff's Rule 59 motion. [Doc. 18]. Plaintiff appealed the denial of the motion to alter or amend judgment to the Fourth Circuit Court of Appeals. [Doc. 19].

Plaintiff now moves the Court for the return of his \$350.00 filing fee "because the funds were never used because Plaintiff['s] 1983 claim here [was] dismissed...." [Doc. 22]. In the alternative, Plaintiff requests that the funds be forwarded to pay his appellate filing fee. [Id.].

Plaintiff's motion will be denied. A filing fee is exactly that – a fee for filing a complaint. Paying the filing fee (or being allowed to proceed without the prepayment of the filing fee) does not guarantee any particular result. It is merely required when a civil complaint is filed in this Court. See LCvR 3.1. After Plaintiff's fee was received, the Court conducted its initial review and dismissed Plaintiff's complaint. Local Rule 3.1(e) allows for the refund of fees only when payment was made in error or "at the direction of the Court." LCvR 3.1(e)(2). The Court declines to direct that Plaintiff's filing fee be returned under the circumstances here.

IT IS THEREFORE ORDERED that Plaintiff's motion for return of filing fee [Doc. 22] is **DENIED**.

IT IS SO ORDERED.

Signed: April 29, 2020

Martin Reidinger

United States District Judge